

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
SOUTHEASTERN DIVISION

SHANGHAI HOST CHEMICAL)
COMPANY, LTD.,)

Plaintiff,)

vs.)

CREATIVE COMPOUNDS, L.L.C.,)

Defendants.)

Case No. 1:06CV95 HEA

MEMORANDUM AND ORDER

This matter is before the Court on Defendant's Motion for Summary Judgment, [Doc. No. 30]. Plaintiff opposes the motion. For the reasons set forth below, the Motion is denied.

The sole basis for Defendant's Motion is that it is entitled to summary judgment because it claims that this action has not been prosecuted by the real party in interest. The two invoices upon which Plaintiff bases its breach of contract action are signed by Host Country LTD, not by Plaintiff. Defendant asserted an affirmative defense that Plaintiff was not the real party in interest.

Subsequently, Defendant deposed Plaintiff's corporate representative, Liang Zhang on January 11, 2008. Mr. Zhang testified that Host Country is Plaintiff's parent company, and that the two are separate legal entities. He further testified that his uncle, Weiting Zhang, is the owner of Plaintiff and the General Manager of Host Country. He

further testified that he and his uncle had discussed an assignment of rights form Host Country, LTD. to Shanghai Host, but that he did not know if such an assignment had been executed. Based on this testimony, Defendant moves for summary judgment for failure of Plaintiff to join or substitute the real party in interest, which Defendant claims is Host Country Ltd.

Plaintiff responds with the assignment. Plaintiff argues that unbeknownst to Mr. Liang Zhang, an assignment of rights was executed which assigned to Plaintiff all interest in contracts made by Host Country LTD during the period on or about September 1, 2005 through October 17, 2005 regarding the two purchase orders at issue.

Defendant's reply challenges the assignment with respect to whether Weiting Zhang had actual or apparent authority to execute the assignment on behalf of Host Country, Ltd. Such issues raise questions of fact which preclude summary judgment under Rule 56 of the Federal Rules of Civil Procedure.

Accordingly,

IT IS HEREBY ORDERED that Defendants' Motion for Summary Judgment, [Doc. No. 30], is **DENIED**.

Dated this 24th day of March, 2008.



HENRY EDWARD AUTREY

UNITED STATES DISTRICT JUDGE